

(1878) 06 AHC CK 0004

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Karan Singh

RESPONDENT

Date of Decision: June 10, 1878

Citation: (1875) ILR (All) 680

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Pearson, J.

From the judgment of the Magistrate it may be gathered that it was stated by more than one of the witnesses for the prosecution, first, that the bullocks in question had been stolen; secondly, that they were brought for sale by the prisoner into mauza Amlea; and, thirdly, that he did actually sell them for a very good price. Nevertheless the Sessions Judge is of opinion that the substance of the evidence on which the conviction was had is not embodied in the judgment, apparently because it does not set forth in detail the deposition of each several witness. It is no doubt important that the evidence should be so set forth in the judgment as to enable the Appellate Court to perform its functions in appeal. The prisoner's right of appeal must not be defeated in consequence of an imperfect statement of the substance of the evidence. On the other hand, it does not appear necessary to cancel a conviction and sentence not otherwise apparently exceptionable by reason of such a defect. The Sessions Judge may have found authority in precedents. The only reported case touching the matter seems to be *Queen v. Kheraj Mullah* 11 BLR 33 which is apparently opposed to the one under report. for the course adopted by him in this case; but we think that, if he found it impossible to dispose of the prisoner's appeal because the substance of the evidence for the prosecution was not sufficiently embodied in the judgment of the Magistrate, it would have been better to have required that officer to repair the defect in his judgment by recording a judgment in

which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a retrial with that view. We therefore cancel the Sessions Judge's order of the 28th January last, and direct him to dispose of the appeal afresh in advertence to the foregoing remarks.